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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,942	07/17/2003	Andrew Tipler	03141-P0418B	1556

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EXAMINER

HYUN, PAUL SANG HWA

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/621,942

Applicant(s)

TIPLER, ANDREW

Examiner

Paul S. Hyun

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REMARKS

Claims 15-25 remain pending. Applicants amended claim 15.

The claim rejection under 35 U.S.C. section 112 cited in the previous Office action has been withdrawn in light of the amendments.

Terminal Disclaimer

The terminal disclaimer filed on 9/20/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,645,773 has been reviewed and is NOT accepted.

The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because the patent being disclaimed has been improperly identified. The number used to identify the patent being disclaimed is incorrect. The correct number is US 6,645,773.

Claim Objections

Claim 22 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

Claim 15 recites all the limitations recited in claim 22.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **15, 16, 19, 22 and 23** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Tipler (US 6,645,773 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 1 of US 6,645,773 B2 recites a method for determining the temperature inside a sealed container comprising the steps of mixing a liquid solvent with a solid compound to create a saturated solution in a sealed container, allowing vapor of the solution to equilibrate in the headspace of the sealed container, taking chromatographic readings of the equilibrated vapor, and calculating the temperature based on the chromatographic readings.

Claims **17 and 20** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of Tipler (US 6,645,773 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 4 of US 6,645,773 B2 further recites that the solvent comprises n-dodecane and the solid comprises naphthalene.

Claims **18 and 21** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of Tipler (US 6,645,773 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 6 of US 6,645,773 B2 further recites that the solvent comprises n-octadecane and the solid comprises anthracene.

Claim **24** is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of Tipler (US 6,645,773 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 2 of US 6,645,773 B2 further recites that the chromatographic readings comprise readings of peak areas of the solvent and the solid compound.

Claim **25** is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of Tipler (US 6,645,773 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 3 of US 6,645,773 B2 further recites that the calculating step comprises the step of calculating the ratio of the readings of peak areas of the solvent and the compound.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **15, 16 and 22-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Leenders et al. (US 4,670,400) in view of Fowler et al. (US 3,753,369).

Leenders et al. disclose a method for analyzing the headspace of a solution inside a sealed reactor (see lines 18-32, col. 2). The method comprises the steps of

mixing a monomer with a reference compound to create a solution, allowing the solution to equilibrate (see lines 56-65, col. 4), and taking chromatographic readings of the vapor to determine the relative amount of the monomer in the vapor phase (i.e. partial pressure) (see Abstract). The determination is made by measuring the ratio of the peak areas corresponding to the monomer and the reference compound (see lines 27-57, col. 3). The method disclosed by Leenders et al. differs from the claimed invention in that temperature is not calculated based on the chromatographic readings.

Fowler et al. disclose a method for recording the relationship between temperature and the vapor pressure of a liquid. Specifically, Fowler et al. disclose that there is a linear relationship between the logarithm of pressure and the reciprocal of Kelvin temperature (see lines 42-55, col. 3). In light of the disclosure of Fowler et al., it would have been obvious to one of ordinary skill in the art to use the vapor pressure data produced by the Leenders et al. method to calculate the temperature of the solution inside the reactor. The calculation can be made to affirm the temperature readings made by a thermometer situated inside the reactor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH
1/4/08


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